

1 Thane Johnson
2 Johnson, Berg & Saxby, PLLP
3 221 First Avenue East
4 P.O. Box 3038
5 Kalispell, MT 59903-3038
6 Telephone: (406) 755-5535
7 Facsimile: (406) 756-9436

8
9
10 Attorneys for Plaintiffs
11

12
13
14
15
16
17
18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF MONTANA**
20 **GREAT FALLS DIVISION**

21 HAROLD L. DUSTY BULL, as
22 Personal Representative of the
23 Estate of CARRIE G. OLD
24 PERSON, YVONNE M. UPHAM,
25 HAROLD L. DUSTY BULL and
1 CLAYTON G. OLD PERSON,
2 individually,

3 Cause No. _____

4 Plaintiffs,

5 **COMPLAINT**

6 vs.

7 UNITED STATES OF AMERICA,

8 Defendant.

9
10 COMES NOW the Plaintiffs, by and through their attorney of record
11 Thane Johnson of Johnson, Berg & Saxby, PLLP, and for their cause of
12 action against the Defendant state and allege as follows:

1. At all times relevant hereto, Plaintiffs Harold L. Dusty Bull, the
2. deceased Carrie G. Old Person, Yvonne M. Upham and Clayton G.
3. Old Person were and/or are citizens of Glacier County, Montana.
4. 2. This Court has jurisdiction over this case pursuant to the Federal
5. Tort Claims Act, 28 U.S.C. 2671, *et seq.*, in that the claim arises
6. from the Government's conduct in providing health care services at
7. Blackfeet Community Hospital (BCH) in Browning, Montana. BCH
8. is an Indian Health Services (IHS) funded facility operated by the
9. United States. The negligent acts and omissions that are the
10. subject of this action were committed by the Government's agents
11. and employees while acting within the course and scope of their
12. employment. This Court has exclusive jurisdiction over tort claims
13. brought against the United States pursuant to 28 U.S.C. §1346(b).
14. 3. Plaintiffs' claims were filed in writing with the Department of Health
15. and Human Services on May 13, 2011. More than six months have
16. elapsed since the claims were filed, and the United States has not
17. accepted or denied the claims. Accordingly, Plaintiffs have
18. appropriately exhausted their administrative remedies.
19. 4. The acts and omissions giving rise to this claim occurred in Glacier
20. County, Montana, which is within this judicial district. Venue is
21. proper in this Court under 28 U.S.C. §§1391(e) and 1402(b).
22. Venue also is proper in this division under this Court's Local Rule
23. 1.11, because Plaintiffs reside in Glacier County and the tort
24. occurred in Glacier County.

- 1 5. On December 6, 2009 through December 9, 2009, Carrie Old
- 2 Person received an overdose of Cerebyx (Dilantin) at BCH. The
- 3 prescribing of said Dilantin was a result of a misdiagnosis of Carrie
- 4 Old Person for an acute intracranial hemorrhage.
- 5 6. Carrie Old Person remained a patient of BCH from December 6,
- 6 2009 until December 9, 2009 when the overdose was discovered, at
- 7 which time she was transferred to the Kalispell Regional Medical
- 8 Center.
- 9 7. The standard of care from 2009 to the present required that Dilantin
- 10 be administered in significantly less quantities than that delivered to
- 11 Carrie Old Person by BCH. The standard of care from 2009 to the
- 12 present required that Dilantin be administered only in the event that
- 13 a patient is diagnosed with an acute intracranial hemorrhage. BCH
- 14 had a continuous duty to properly diagnose Carrie Old Person and
- 15 appropriately administer and dispense Dilantin to Carrie Old
- 16 Person. Failing to properly administer and dispense Dilantin and
- 17 the failure properly diagnose Carrie Old Person was negligent.
- 18 8. BCH's negligence caused the death of Carrie Old Person on
- 19 December 24, 2009.
- 20 9. Plaintiff Harold L. Dusty Bull is the son and Personal Representative
- 21 of Carrie G. Old Person who passed away on December 24, 2009.
- 22 10. Plaintiff Yvonne M. Upham is the daughter of the Decedent.
- 23 11. Plaintiff Clayton G. Old Person is the son of the Decedent.

- 1 12. Carrie Old Person's death has deprived Harold L. Dusty Bull,
2 Yvonne M. Upham and Clayton G. Old Person of her love, affection,
3 companionship and services.
- 4 13. At the time of her death, Carrie Old Person served a very important
5 function for the Blackfeet Tribe in that she was a teacher of the
6 language and the holder and carrier of the songs, dances, and
7 traditions. She counseled the leaders of the Blackfeet Tribe
8 including but not limited Earl Old Person.
- 9 14. Carrie Old Person's death has given rise to wrongful death and
10 survival claims, both of which are asserted herein by Plaintiffs.
- 11 15. Plaintiffs have suffered damages including, but not limited to, loss of
12 support, society, comfort, guidance, education, care,
13 companionship, non-compensated services, burial expenses and
14 funeral services, reasonable medical charges, grief, sorrow, mental
15 anguish, and reasonable compensation for the suffering of Carrie
16 Old Person.

17 WHEREFORE, Plaintiffs pray for judgment against the United
18 States as follows:

- 19 1. For damages to be proven at the time of trial, including but not
20 limited to damages for loss of support, society, comfort, guidance,
21 education, care, companionship, non-compensated services, burial
22 expenses and funeral services, reasonable medical charges, grief,
23 sorrow, mental anguish, and reasonable compensation for the
24 suffering of Carrie Old Person;

- 1
2. For all provable damages for loss of established course of living,
3. loss of household services, loss of consortium with children and
4. grief, suffering and mental anguish;
5. 3. For Plaintiffs allowable costs for bringing this lawsuit; and
6. 4. For such other and further relief as this Court deems just and
7. proper.

DATED this 11th day of January, 2012.

JOHNSON, BERG, & SAXBY, PLLP

10 /s/ *Thane Johnson*

11 By: _____
12 Thane Johnson
13 Attorneys for Plaintiffs

14
15
16
17
18
19
20
21
22
23
24
25
26